

US Department of Transportation

HR EMERGENCY GUIDANCE

*HR Guidance for use in the event of an
Emergency*

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GENERAL INFORMATION

A. Overview

In the event of a natural disaster, health pandemic or other widespread emergency situation, this handbook shall serve as Departmental human resources (HR) guidance for the Office of the Secretary and Operating Administrations. This handbook does not create new policy but it does attempt to centralize guidance on various issues that have consistently arisen during previous emergencies.

B. Record Keeping

A. To ensure that DOT is able to provide accurate accounts of pay and leave benefits granted to employees as a result of an emergency situation, Operating Administrations and Departmental Offices are directed to maintain records of the following:

- (1) Hours and value of excused absence granted.
- (2) Hours of premium pay authorized, including overtime pay, night differential and Sunday premium pay, compensatory time off for travel, travel pay, administratively uncontrollable overtime (AUO) and standby pay.
- (3) Travel expenses for staff assigned to assist with emergency response, clean up and relief efforts.
- (4) Travel expenses and per diem paid for employees ordered to evacuate an affected area.

C. HR Flexibilities

Information on human resource flexibilities, such as critical hire authority, direct hire authority and use of temporary personnel available to assist your organizations can be found at <http://www.opm.gov/oca/compmemo/2005/2005-13.asp>.

D. Health Benefits

- A. DOT will be as flexible as regulations allow in permitting displaced employees who lose coverage to enroll in the FEHB program of the area to which the employee has relocated. Employees must contact their human resources office to determine eligibility and for guidance.
- B. If an employee loses coverage as the result of a declared emergency, even if the employee is not displaced outside of his/her home area, the employee may qualify to enroll in a FEHB plan or change FEHB carriers.

- C. Employees may enroll in the FEHB program if they lose health insurance coverage through their spouse's non-Federal employment. 5 CFR 890.301 (i) allows employees to enroll from 31 days before to 60 days following the loss of coverage under a non-Federal health plan.

E. DOT RETCO Program

- A. DOT's Regional Emergency Transportation Coordination (RETCO) Program is responsible for coordinating transportation for incoming resources for the response – everything from search and rescue teams to ice, water and generators; and for assisting people as they evacuate an area. Staffing for the RETCO program consist primarily of regional staff from various Operating Administrations. Additional information on the RETCO program is available in Appendix A.
- B. RETCO team members are entitled to premium pay according to their designation (exempt vs. non-exempt) under the Fair Labor Standards Act (FLSA). As with all employees performing work in connection with an emergency, there is no automatic entitlement to grant FLSA premium pay to RETCO employees regardless of their FLSA designation (exempt vs non-exempt). Additional information on premium pay applicable to all employees is available in the Compensation chapter of this handbook.

F. Emergency Employee and Mission-Critical Employee Designations

- A. All Operating Administrations and Departmental Offices are reminded to annually review and update listings of emergency employees and mission-critical emergency employees. A listing of emergency and mission-critical emergency employees should be on file with the HR Office of each Operating Administration and the Office of the Secretary. Employees should be notified in writing of their designation to ensure they are aware of their availability and reporting requirements during an emergency.
- B. *Emergency employees* are generally employees identified as critical to agency operations during all dismissal or closure situations. Additional guidance on emergency employees is available in DPM 610, Hours of Duty and is available at http://dothr.ost.dot.gov/HRPolicy/DPM_610-4-21-05.pdf. A sample memorandum on notifying employees of their designation is available in Appendix B.
- C. *Mission-critical emergency employees* are employees who may be activated to maintain continuity of Government operations during emergencies involving national security, a natural disaster, extended emergencies, or other unique situations such as an Avian Flu outbreak.

G. Telework

- A. Telework may be used by employees designated as emergency and/or mission-critical to continue agency operations if they are prevented from accessing the traditional office building or other designated location.
- B. Employees approved to telework must have a telework agreement in place. That agreement should clearly indicate if the employee is expected to begin working or continue working during an emergency. The agreement must also specify if the employee must perform designated duties during all emergencies or specific types of emergencies.
- C. The implementation of a telework agreement for emergencies does not confer an entitlement to regular and recurring telework arrangement. While it is possible for some emergency employees and mission-critical employees to have regular telework agreements, it is more likely that situational telework will be most appropriate for these employees. Therefore, you should implement telework agreements that specify the situation for which telework is required. It is important that the necessary equipment and access to necessary Departmental servers and systems is provided to these employees to maintain operations. Operating Administrations and Departmental Offices should work with their respective Chief Information Officers in advance to ensure necessary information technology access prior to telework being used in response to an emergency situation.
- D. Additional information on telework may be found in DOT Order 1500.1 (http://dothr.ost.dot.gov/HRPolicy/Subject/DOT_ORDER_1501.1.pdf) and in the telework policy of the Office of the Secretary and each Operating Administration.
- E. A sample telework agreement for Emergency and Mission Critical Employees is available in Appendix C.

LEAVE

A. Extended use of Excused Absence

- A. Heads of Operating Administrations and Departmental Offices are delegated the authority to grant excused absence in the event of an emergency or other extenuating circumstances to protect the safety or security of one or more employees.

- B. The Assistant Secretary for Administration, through the Departmental Office of Human Resource Management, may authorize the extended use of excused absence for employees impacted by a widespread emergency that impacts the Federal Government in whole, or in part. The Departmental Office of Human Resource Management will issue guidance on the use of extended excused absence, including the maximum amount authorized, to HR Directors for implementation within Departmental Offices and Operating Administrations.

B. Excused Absence to Volunteer for Private Relief Efforts

- A. While DOT supports the enthusiasm and dedication of its employees to help those impacted by natural disasters, terrorist attacks and other emergency situations, excused absence will not be granted to employees who choose to volunteer for private response, relief and clean-up efforts. This serves to eliminate the appearance of favoritism and endorsement of specific organizations and activities.
- B. Employees may request paid or unpaid leave to participate in volunteer activities. Departmental Offices and Operating Administrations are encouraged to approve requests for both paid and unpaid leave to the maximum extent possible and to the extent that there is no adverse impact on operations.

C. Emergency Leave Transfer Program

Following declaration of a major disaster or emergency, the President may direct OPM to issue guidance authorizing the establishment of an emergency leave transfer program. Based on the impact of the disaster or emergency, DOT will determine if implementation of an emergency leave transfer program is necessary to meet the needs of its employees. If a determination is made that authorized excused absence or other leave is not sufficient, the Departmental Office of Human Resource Management will issue guidance to HR Directors regarding implementation of an emergency leave transfer program.

D. Restored Leave

- A. Employees who accumulate leave in excess of their annual limitation as a result of performing duties related to an emergency and its aftermath may be eligible to have that leave restored. Eligibility will be determined on a case-by-case basis and in accordance with the rules established for requesting and restoring annual leave above the carryover limitation.
- B. Employees must follow procedures established by their organization to request restored leave at the end of the leave year. Operating Administrations and Departmental Offices have the delegated authority to grant restored leave to employees who would otherwise forfeit annual leave as a result of work performed in connection with an emergency. Proper documentation must be maintained that includes at a minimum the nature of the emergency, the reason for

granting restored leave to the identified group, and the names of all employees eligible for restored leave as a result of the specified emergency.

- C. Employees who are prevented from working because of an emergency and who receive excused absence that results in the accumulation of annual leave in excess of their annual limitation are **not** eligible to have that excess leave restored.

E. Military Leave

- A. Reservists who are activated to perform duties in support of civil authorities, for clean up efforts, for relief efforts or other duties as ordered by the President or a State Governor in support of an emergency are entitled to:

- (1) Use of the 15 days of normal military leave; and/or
- (2) Use of the 22 days of emergency military leave.

- B. Reservists are **not** entitled or eligible to receive excused absence while performing duties in support of civil authorities, relief, recovery, rescue or other efforts.

COMPENSATION

A. Advance Salary Payments to Employees Impacted by Emergency

- A. The Office of the Assistant Secretary for Administration, through the Departmental Office of Human Resource Management, may delegate to each Departmental Office and Operating Administration the authority to provide pay advances to employees personally affected by a natural disaster or emergency. The Departmental Office of Human Resource Management will notify HR Directors if a delegation is authorized.
- B. Upon delegation, organizations must determine if an employee is eligible for an advance payment as described in 5 CFR 550.403 (a).
- C. The HR office for each organization is responsible for providing a written request to process an advance salary payment via e-mail or fax. The request must include:
 - (1) the employee's name,
 - (2) last 4 digits of SSN,
 - (3) department, bureau,
 - (4) gross amount of the advance,
 - (5) check mailing address or ABA Routing Number, Account Number and

type of account (Checking or Savings), and
(6) Cost structure to be charged

- D. Departmental Offices and Operating Administrations, in coordination with the Departmental Office of Human Resource Management, will determine if a salary advancement may be waived or must be repaid in accordance with 5 USC 5522 (c). The decision to waive repayment must be applied consistently to all similarly situated employees.
- E. A request for Bill of Collection is immediately created when a salary advance is authorized. However, the Departmental Office of Human Resource Management will instruct payroll to delay issuance of the bill until instructed by OST or the Operating Administration.

B. Repayment of Advanced Salary Payments

- A. If the decision to waive repayment of a salary advance is made, payroll will not issue the Bill of Collection.
- B. If the employee is required to repay the debt:
 - (1) And the repayment occurs in the same year that the advance was authorized, the repayment will be the amount of the **net pay** received. The employee's end of year W-2 will be reduced to account for the repayment.
 - (2) And the repayment occurs in another tax year, the employee must repay the **gross** amount of the salary advance, less OASDI and Medicare taxes. The employee's W-2 for the year of issuance will show the gross amount of the payment and the W-2 for the year of repayment will not show a reduction. The employee may be able to recover the taxes in the year of repayment in accordance with IRS procedures. Employees are encouraged to contact the IRS or their tax advisor for guidance.

C. Travel and Per Diem for Evacuated Employees

- A. Operating Administrations and Departmental Offices may be delegated the authority to provide payments for travel and subsistence expenses (per diem) to employees (and their dependents) who received a written or oral order of evacuation. Travel and per diem may be provided from the date of evacuation until arrival at a safe haven in accordance with regulations found at 5 CFR 550.403.
- B. Additionally, Operating Administrations and Departmental Offices may be delegated the authority to continue applicable per diem rates while employees (and their dependents) remain at a designated safe haven or other approved location (5 CFR 550.403 (c) and 550.405).

D. Hazardous Duty Pay

Work performed in connection with an emergency does not automatically entitle an employee to Hazardous Duty Pay. Employee entitlement to Hazardous Duty Pay will be determined in accordance with the specific guidance outlined in 5 CFR 550.900.

E. Overtime Pay

- A. Employees with rates of pay equal to or less than the rate of basic pay for GS-10, step 1, and employees covered by the Fair Labor Standards Act (FLSA), earn overtime at 1.5 times their normal hourly rate.
- B. Employees who are exempt from (not covered by) the FLSA earn overtime at the higher of the overtime rate for GS-10, step 1, or their normal straight hourly rate of basic pay.

Example: A GS-14, step 1 employee in the Washington, DC locality area performs overtime. The employee's normal straight hourly rate is \$43.80. The overtime rate for GS-10, step 1 in the Washington, DC locality area is \$35.51. Because the employee receives the higher amount for overtime, the employee will receive her normal straight hourly rate of \$43.80 for all overtime hours performed.

F. Exempt vs. Non-Exempt Premium Pay

- A. **FLSA non-exempt** employees earn overtime at the rate of one and a half times the hourly regular rate of pay. Non-exempt (covered by FLSA) overtime pay is not counted in annual or biweekly premium pay limitations.
- B. **FLSA-Exempt** (not covered by the FLSA) employees receive overtime compensation at the greater of (1) one and one-half times the hourly regular rate of pay of grade GS-10, Step 1; or (2) the hourly regular rate of pay of the position.
- C. In rare circumstances, FLSA exempt employees performing non-exempt duties for more than 20 percent of the workweek may be eligible to receive premium pay at the non-exempt rate in accordance with 5 CFR 551.208. Use of this authority is very rare and may only be used during a declared emergency.
- D. The final determination to change the FLSA exemption status of an employee working on an emergency is delegated to the HR Director for the Office of the Secretary and each Operating Administration. The determination to change the FLSA status of an employee is made each week and determined by the duties performed each week. Managers will need to prepare a written justification that outlines the duties being performed by the employee and the percentage of time the employee is spending on those duties each week.

- E. Certification of premium pay entitlement for employees working with organizations other than their normal office must be made by the organization responsible for assigning and monitoring the employee's duties. *For example, an FTA employee working with OST in response to an emergency situation would have eligibility for premium pay determined by OST.*
- F. The CASTLE program manager for the Operating Administration and the Office of the Secretary must be notified in the event that a FLSA exempt employee is certified to receive premium pay at FLSA non-exempt rates in accordance with 5 CFR 551.208. Instructions on how to process the FLSA change will be issued by the Departmental CASTLE Administrator.

G. Premium Pay Limitation

- A. The Human Resources Director for each Operating Administration and the Office of the Secretary has the delegated authority to approve use of the annual premium pay limitation.
- B. Generally, exempt employees may earn no more than the higher of the biweekly rate for a GS-15, step 10, for their locality area or Level V of the Executive Schedule. However, the Departmental Office of Human Resource Management may issue a blanket waiver of the bi-weekly premium pay limitation for all employees performing work related to a designated emergency.
- C. Once the bi-weekly premium pay limitation is waived, exempt employees are subject to the annual premium pay limitation that is the higher of the annual rate for GS-15, step 10, in their locality area or Level V of the Executive Schedule.
- D. If the biweekly premium pay limitation is waived for an exempt employee, instructions on processing a waiver will be issued to the CASTLE program manager for each Operating Administration and the Office of the Secretary.
- E. Nonexempt employees covered by FLSA are not subject to a biweekly premium pay limitation.

Appendix A: DOT RETCO Program

Transportation is a valuable lifeline in our communities on a daily basis, but during disasters, it is an essential component for helping the community get back on its feet and restoring its economy. To provide a centralized, effective program, the Office of Intelligence, Security and Emergency Response (S-60) of DOT performs coordinated crisis management functions for multimodal transportation emergencies. After a disaster, S-60 and other DOT staff are responsible for a variety of functions, including leadership of Emergency Support Function #1 (ESF #1) of the National Response Plan, arranging transportation of disaster relief supplies, assessing damage to the nation's transportation system, and participating in damage assessment teams.

The ESF #1 team operates out of the FEMA, or DOT headquarters in Washington DC, and may also be assigned to FEMA Regional Operations Centers, or other field facilities near the disaster site. Team Members may also participate in Preliminary Disaster Assessments at the Disaster Site, or assist with logistics at a FEMA mobilization site. Generally, employees are mobilized for two weeks to thirty days. Employees may be called upon to work long hours (12 hour shifts) over a period of several days in a stressful environment during disaster exercises or events and may also be required to travel to remote locations. During mobilization the employees' duties may include, but are not limited to:

- Working with other DOT staff to obtain transportation services and track transportation assets into and out of the disaster area in support of Federal agencies, State and local governmental entities, and voluntary organizations.
- Providing staff at DOT headquarters, FEMA headquarters, the Homeland Security Operations Center, Regional Operations Centers, or other locations to assist DOT Emergency Response personnel. Exercising due diligence and oversight of transportation expenditures.
- Facilitating the assessment of damages to the transportation infrastructure and conducting analysis of the impact of the disaster or terrorist attack on transportation operations, and monitoring transportation capacity and congestion.
- Coordinating and facilitating response and recovery functions performed under DOT statutory authorities, including the prioritization and/or allocation of civil transportation capacity, air and marine traffic control, search and rescue, emergency highway funding for federally owned highways and highways on the Federal Aid System, hazardous material containment response, and damage assessment.
- Identifying resource requirements for transportation and coordinate their allocation.

As with all employees, RETCO employees are entitled to premium pay based on their FLSA designation. During designated emergencies, premium pay entitlement may be based on actual duties performed.

Appendix B: *Sample* Notification of Designation as Emergency Employee

FOR: Employee Name

FROM: Supervisor or Authorizing Official

SUBJECT: Designation as an Emergency Employee

The purpose of this memorandum is to inform you that your position has been identified as one whose duties must be performed even in emergency circumstances to continue the mission of the U.S. Department of Transportation, (OA or Departmental Office).

In the event of an emergency, you are instructed to disregard media announcements instructing Federal employees that the Federal Government is closed, has delayed arrivals, or early dismissals. I or another authorizing official will make any determinations to modify your schedule because of an emergency and communicate any necessary changes to you. This includes instructing you to report to alternate locations or using telework to perform your duties and maintain operations.

If you have any questions on your designation as an emergency employee, please let me know.

Appendix C: Sample Telework Agreement for Emergency and Mission Critical Employees

This telework agreement is designed for core and situational telework performed by employees designated as emergency or mission-critical to respond to an emergency. The implementation of this type of agreement does not confer any entitlement to a regular and recurring telework arrangement, nor does it exclude the employee from being eligible for a regular and recurring telework agreement.

In the event that emergency and mission-critical employees are prevented from accessing the traditional office building or other formal COOP location, this type of telework arrangement would ensure that sufficient resources are readily available to maintain operation. Eligibility for regular and recurring telework arrangements must be established in accordance with DOT Order 1500.1 and the telework policy of each organization.

TYPE OF EMPLOYEE: **Emergency** **Mission-Critical** **Emergency**

Name: _____

Title/Series/Grade: _____

Agency/Organization: _____

Type of Alternative Worksite: Home Other

Address of Alternate Worksite:

Phone: _____ Fax: _____

Alternate E-mail:

OFFICIAL DUTY STATION:

The employee's official duty station for such purposes as special salary rates, locality pay adjustments, and travel remains unchanged. Telework performed in response to the emergency, will not be the sole purpose for changing an employee's duty station.

TIME AND ATTENDANCE, WORK PERFORMANCE AND OVERTIME

Total time spent in a teleworking status may vary by type and length of each emergency. The employee is required to satisfactorily complete all assigned work as assigned by management in response to the emergency and/or maintain continuity of operations.

SECURITY AND EQUIPMENT

The employee is responsible for the security of all official data, and protection of any government-furnished equipment and property, in carrying out the mission of DOT at the alternative worksite. Management officials, in conjunction with their Chief Information Officer, have identified the necessary level of technology access needed by telework employees.

WORKERS' COMPENSATION AND OTHER LIABILITIES

While teleworking at an alternative work site, an employee who is directly engaged in performing the duties of their jobs are covered by the Federal Employees Compensation Act.

STANDARDS OF CONDUCT

The employee continues to be bound by the Standards of Ethical Conduct for Employees of the Executive Branch while working at the alternative worksite.

TERMINATION OF THE TELEWORK AGREEMENT

The use of telework in this instance is required by the nature of the designation and the nature of the emergency. However management retains the discretion to terminate this telework agreement.

I have reviewed and understand the terms and conditions of this telework agreement.

Signature:
Employee: _____ **Date:** _____

I have reviewed and discussed the terms and conditions of this telework agreement with the employee.

Signature:
Supervisor: _____ **Date:** _____

Copy of approved and signed agreement must be provided to the designated Telework Coordinator in your organization.